



## REQUEST FOR PROPOSALS TITLE PAGE

Include This Page as the First Page In Your Proposal Response

### City of Lynchburg, Virginia Procurement Division

Proposal Title: **College Hill Filtration Plant Rehabilitation Project**

This is the City of Lynchburg's Request for Proposals No. RM-04-930, issued September 29, 2004. Direct inquiries for information to: Raleigh J. Motley; Phone: 434-4553964; Fax: 434-845-0711. All responses to this solicitation shall be in strict accordance with the requirements set forth in this bid document and the ensuing contract documents.

A mandatory Pre-proposal Conference will be held for this RFP on Thursday, October 14, 2004, 10:00 a.m. at the site of the project @ 525 Taylor Street, College Hill Filtration Plant, Lynchburg, Virginia. Any alteration or changes to this Request for Proposals will be made only by written addendum issued by the City of Lynchburg Procurement Division.

Sealed proposals will be publicly accepted prior to 3:00 p.m. November 10, 2004, however only the names of firms responding will be available for announcement. Proposals received after the stated due date and time shall not be considered. Submit proposals in a sealed, opaque envelope, and put the RFP number, title, due date and time on the lower left front. Offerors are responsible for having their proposal stamped by Procurement Division staff before the deadline indicated above and acknowledge all addenda so issued in the space provided below. All Offerors are responsible for obtaining issued addenda from the City's Purchasing Division website @ [www.lyncburgva.gov/home/index.asp?page=981](http://www.lyncburgva.gov/home/index.asp?page=981)

Acknowledge receipt of addenda here: No. \_\_\_\_\_ Date: \_\_\_\_\_ No. \_\_\_\_\_ Date: \_\_\_\_\_

Submit Proposals:

**BY MAIL, GROUND DELIVERY, OR HAND DELIVER TO:**

Procurement Division  
Third Floor City Hall  
900 Church Street  
Lynchburg, Virginia 24505

**Information the Offeror deems Proprietary is included in the proposal response in section(s):**

See Paragraph B. on page 2 for guidelines on submitting proprietary information.

In compliance with this Request for Proposals and all the conditions imposed therein, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed by subsequent negotiations. By my signature below, I certify that I am authorized to bind the Offeror in any and all negotiations and/or contractual matters relating to this Request for Proposals. Sign in ink and type or print requested information.

Full Legal Name of Offeror: \_\_\_\_\_

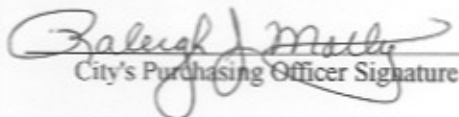
Fed ID OR SOC. SEC. NO.: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

Signature: \_\_\_\_\_

Typed or Printed Name, Title

  
City's Purchasing Officer Signature

## **I. SUBMISSION OF PROPOSALS**

- A. **An original (1), so marked, and (4) copies, so marked, for a total of (5)** of your proposal document are required. In addition, submit one (1) copy of proposal in an electronic format, either floppy disk or CD in Microsoft Word format or PDF file format must also accompany your proposal. The City will not assume responsibility for reproduction where an insufficient number of copies have been supplied. In any such case, the City will notify the Offeror of the deficiency and request that the appropriate number of copies be delivered within 24 hours. Failure to comply with this or other requirements of this Request for Proposal shall be grounds for the City to reject such proposals. Telegraphic or facsimile submission of proposals is not acceptable and any such proposals will not be considered. Nothing herein is intended to exclude any responsible Offeror or in any way restrain or restrict competition. All responsible Offerors are encouraged to submit proposals.
- B. **Submission of Proprietary Information**
- Trade secrets or proprietary information submitted by an Offeror in connection with this procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the Offeror must invoke the protection of this section prior to or upon submission of the data or the materials, and must identify the data or other materials to be protected and state the reason why protection is necessary. (Section 2.2-4342 F. of the Code of Virginia). **Offerors shall submit, in a separate section of the proposal, any information considered proprietary and any copyrighted material and clearly identify the information as proprietary and/or copyrighted information. Offerors may not declare their entire proposal proprietary nor may they declare proposed pricing to be proprietary.** References may be made within the body of the proposal to proprietary information; however all information contained within the body of the proposal not in the separate section labeled proprietary shall be considered Public Information.
- C. Proposals having any erasures or corrections must be initialed by the Offeror in ink.
- D. The City reserves the right to accept or reject any or all proposals, to waive informalities, and to reissue any request for proposals and to award contracts to multiple Offerors. Any contract resulting from this Request for Proposal shall not be exclusive to the Successful firm. The City reserves the right to contract with firms not party to the resultant contract for similar work if it determines this to be in their best interest. If this is a cooperative procurement, each entity referenced will award a contract in accordance with its respective independent procurement policies and procedures and as it deems will best serve its interest.
- E. By submitting a proposal response, the Offeror agrees that the **proposal response will not be withdrawn for a period of 90 days** following the due date for proposal responses.
- F. By submitting a proposal response, the Offeror certifies that it has not combined, conspired or agreed to intentionally rig, alter or otherwise manipulate, or to cause to be rigged, altered or otherwise manipulated its proposal response for the purpose of allocating purchases or sales to or among persons, raising or otherwise fixing the prices of the goods or services, or excluding other persons from dealing with the City.
- G. By submitting a proposal response, the Offeror certifies that its proposal is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontracting firm in connection with its proposal; and that it has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.
- H. The City will not be responsible for any expense incurred by any Offeror in preparing and submitting a proposal response. All proposals submitted will become the property of the City.

## **II. GENERAL INFORMATION AND OBJECTIVE**

- A. The City of Lynchburg owns and operates the 14.0 million gallon per day College Hill Filtration Plant at 525 Taylor Street, Lynchburg. Constructed in 1958, and upgraded in 1985, the filters are in need of upgrade and renovation. The plant has seven 361 square feet, Wheeler bottom, high rate (4gpm/sf) filters. The Project will include, depending on the Preliminary Engineering Report recommendations, renovation and replacement of filter components including media, bottoms, troughs, walls, surface wash or air scour equipment, wash water pump, valves and actuators, rate of flow controllers, water quality instrumentation, filter consoles, and associated SCADA equipment. The Project may also include modifications to chemical feed systems, laboratory improvements, control room and SCADA improvements, general building repairs, addition of a backwash surge tank, and rehabilitation or replacement of the existing backwash piping to sewer.
- B. The intent of this Request for Proposal (RFP) is to solicit Engineering Services from highly qualified firms for rehabilitating the College Hill Filtration Plant's filtration system. These services shall include preliminary engineering reports (PER), generating construction contract documents (CD), in compliance with City of Lynchburg's standards, *AIA Documents Not Allowed*, bidding phase services (BP) *Preparing bid documents in form acceptable to the City in both hard copy and electronic formats, generating written responses to questions posed during the bid proceeding and supplying to City for publication and distribution, attending prebid conferences and production of associated minutes, providing bid analysis if requested*, and construction administration (CA).

### III. PROJECTED SCHEDULE OF IMPLEMENTATION

<u>DATE</u>	<u>SCHEDULE OF ITEMS</u>
September 29, 2004	Issue Request for Proposals
October 14, 2004	Mandatory Pre-Proposal Conference 10:00 a.m. College Hill Filter Plant
November 10, 2004	Proposals Due Prior to 3:00 p.m.
November 15-23, 2004	Shortlist Proposals
Nov. 29-Dec 1, 2004	Presentation/Discussions with Selected Offerors
December 3, 2004	Conduct Final Ranking
December 7, 2004	Obtain Administrative Approvals/ Issue Intent To Award
December 15, 2004	Execution of Contract Documents
December 17, 2004	Award of Contract
January 3, 2005	Implement and Begin Initial Phase of Contract

### IV. SCOPE OF SERVICES

These phases include all activities required by the City to undertake and accomplish a full and complete project design, including (but not limited to):

- a. Review all constraints and parameters as may be applicable to the completion of the project.
- b. Conduct all meetings with City staff to obtain information and to coordinate control and access to the facilities.
- c. Act as liaison between the City and the Virginia Department of Health. Submit the Preliminary Engineering Report and Construction Documents to the Virginia Department of Health for review and approval. Arrange and attend appropriate meetings and respond to review comments.
- d. Evaluate existing facilities and prepare a Preliminary Engineering Report with recommendations and cost estimate. Preliminary engineering shall include:
  1. physical inspection and evaluation of the filters and related items, filter valves and piping, coagulation tank valves and vaults
  2. instrumentation and controls architecture
  3. evaluation of alternative equipment and processes: air scour backwash, provisions for future UV radiation for *Cryptosporidium* inactivation
  4. electrical system evaluation, including generator condition and capacity to serve the treatment plant and on-site booster pumping
  5. conceptual design of laboratory improvements
  6. conceptual design of control room improvements
  7. backwash surge tank and drain line
  8. evaluation of existing powdered activated carbon system
  9. general building modifications and repairs
  10. cost estimates
  11. design and construction schedule
- e. Provide design services for the plant rehabilitation according to the recommendations of the Preliminary Engineering Report and as further defined by the Owner. Prepare construction drawings in Autocad 2000 format, and provided on CD converted to PDF. Prepare text documents in MS Word format.
- f. Provide bidding phase services including providing bid documents in PDF format for publication by the Procurement Division, conducting the pre-bid conference, preparing written responses to questions posed during the bid period, and providing to City for publication and distribution, and assisting with review of bids after closing date for receipt of bids. Distribution of full size plans to prospective bidders of record, and supplying an up to date plan holders list to the City's Purchasing Division. ( The firm so selected shall have no responsibility to confer verbal or written information to prospective bidders during the bid phase, and will coordinate with the City to release an statement or information to prospective bidders)
- g. Provide construction administration services including but not limited to conducting the pre-construction conference, participating in monthly progress meetings, submittal review, processing of change orders, and pay application review.

A. MANDATORY REQUIREMENTS:

1. Compliance with all applicable terms of this RFP and the subsequently negotiated Contract.
2. Compliance with all applicable standards of the associated profession

3. Compliance with all applicable Federal, State and local laws

## V. **PROPOSAL PREPARATION**

The proposal response must address the items included in the Scope of Services and the Criteria for Proposal Evaluation. Proposals should be prepared simply, providing straightforward and concise responses to requests for information and descriptions of qualifications and capabilities. Each copy of the proposal must be bound with all documentation in a single volume where practical. Failure to do so will result in a lowered evaluation. Incomplete proposals may be determined nonresponsive.

Offerors should organize their proposals using the format described below:

### A. **Title Sheet**

Furnish the information requested on the **REQUEST FOR PROPOSALS TITLE PAGE** of this solicitation and include it as the first page of your proposal response. The name stated on the Title Sheet must be the full legal name of the Offeror and the address must be that of the office which will have the responsibility for the services provided. **Offeror's shall specify in the introductory cover sheet the section(s) containing trade secrets or proprietary information.**

### B. **Project Methodology**

Briefly describe your firm's general approach to providing these services (use exhibit if appropriate).

### C. **Project Schedule**

Provide a time line and schedule applicable for the proposed project.

### E. **Experience of the Offeror in Providing This Service**

Include a brief statement of the Offeror's experience in providing the services stated in the Scope of Services. If any subcontractor firms will be used, they should be identified and their qualifications included in the proposal response. Include experience of key individuals to be assigned to this contract, emphasizing their experience in working with similar contracts and local governments. Show only experience directly related to their assigned duties under the proposed contract.

### F. **References**

Provide a list of clients for whom similar services have been provided and dates when the service was provided. Include client name, address, telephone number, facsimile number, description of type of services performed, and person the City may contact.

### G. **Cost of Services**

The City will enter into negotiations with the offeror ranked highest to outline the final cost of services. If acceptable terms cannot be reached with the offeror ranked first, negotiation will be terminated and negotiations with offeror ranked second. Negotiations will be continue in the order of ranking until an acceptable contract can be reached, or the City will terminate negotiation and re-advertise the project.

### H. **Insurance**

The selected firm shall be required to maintain in force such insurance, in amounts acceptable to the City, as will protect himself and the City from claims which may arise out of or result from the execution of the work, whether such execution be by himself, his employees, agents, subsubcontractor firms or by anyone

for whose acts any of them may be liable. This coverage should include, at a minimum, Worker's Compensation, General Liability (including premises/operations, independent successful firms, products and completed operations, contractual liability and personal injury liability) and Automobile Liability. All insurance shall be provided by companies authorized to conduct business in the Commonwealth. The selected firm shall furnish the City with an original Certificate of Insurance upon request. The Certificate should name the City as additional insured. The selected firm shall notify the City at least 30 days prior to policy cancellation, non-renewal or reduction of coverage.

## **VI. CRITERIA FOR PROPOSAL EVALUATION AND METHOD OF AWARD**

### **Evaluation Criteria**

The following criteria will be utilized in evaluating proposals:

Proposals will be reviewed and evaluated according to the following criteria:

- a. Expertise, experience and qualifications of staff disciplines including construction inspectors. Identify all disciplines available within the firm and those that will be subcontracted to others, which are relevant to the RFP.
- b. Managerial capabilities including ability to manage projects simultaneously and expeditiously; approach to problem/task resolution; and methodology/data gathering techniques and procedures.
- c. Geographic location of the engineering firm's office where work will be performed.
- d. Expertise and past experiences of the engineering firm and/or subcontractor firm in providing services on projects of similar size, scope and features as those required for the Scope of Services on this RFP.
- e. Overall suitability to provide the services for the Contract within the time, budget and operational constraints that may be present.

### **Method of Award**

Following evaluation of the written proposals as submitted, selection shall be made of two or more Offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, and respondents ranked 1,2,3, (or more). Negotiations shall then be conducted with the firm ranked number 1 in an attempt to reach an agreement to provide the services. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with the top ranked firm, an agreement cannot be reached, negotiations will be terminated with that firm, and negotiations began with the firm ranked number 2. This procedure will continue until an agreement is reached or negotiation are terminated and the services resolicited. Should the City determine in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.

## **VII. CONTRACT TERM**

The initial term of this contract shall be for \_\_\_\_\_ from contract signing, upon mutual consent of the parties to the contract. Any time extensions granted by the City shall be by written amendment signed by both parties to the original agreement.

## **VIII. GENERAL TERMS AND CONDITIONS**

### **A. Subcontracting And Assignment Of Work**

The successful firm shall not subcontract or assign portions of the work, other than those specifically defined in the CONTRACT, without the express written consent of the City. A description of any work the

Offeror proposes to subcontract shall be submitted to the City for review and approval along with the name and address of the individual, firm, or corporation that is the proposed subcontracting firm. This submittal shall also include a list of the key personnel that the subcontractor firm will assign to the project. All work performed by any subcontractor firm shall be coordinated by the successful firm and the successful firm will be responsible to the City for all work performed by any subcontracting firm or special consultant.

B. Payment For Services

Payments to the successful firm shall be made within 30 days after receipt of an approved invoice for services provided in the previous month. Backup documentation for each invoice shall be provided in detail satisfactory to the City. The successful firms records and documentation supporting such invoices shall be made available to the City upon reasonable request. The successful firm agrees to retain all records, documents and support materials relevant to the CONTRACT for a period of five years following final payment.

C. Independent Successful firm

The successful firm is an independent successful firm and nothing contained in a subsequent CONTRACT shall constitute or designate such firm or any of its agents or employees as employees of the City.

D. Notification

Any notice required by the Contract shall be effective if given by registered mail, return receipt requested, to the Successful firm in the name and at the address given in its proposal submission; provided that change of address shall be effective if given in accordance with this paragraph. Unless otherwise specified, any notice to the City shall be given to the City of Lynchburg, Procurement Administrator, P. O. Box 60, Lynchburg, VA 24504. The Successful firm agrees to notify the City immediately of any change of legal status or of address. Any notice provided in accordance with this paragraph shall be deemed to have been completed five calendar days after the date of mailing.

E. Termination And Ownership Of Documents

The City reserves the right to terminate the contract upon written notice to the Successful firm. In the event of termination pursuant to this paragraph which is not the fault of the Successful firm, the Successful firm shall be paid for all services provided through the date of termination. The contract will terminate immediately upon failure of the City of Lynchburg, City Council to appropriate funds for its continuance.

The Successful firm agrees that all information and materials gathered and/or prepared by or for it under the terms of the CONTRACT shall be delivered to, become and remain the property of the City upon completion of the work or termination of the CONTRACT. The City shall have the right to use and reproduce the data and reports submitted hereunder, without additional compensation to the Successful firm.

F. Laws And Regulations

The Successful firm shall abide by all Federal, State and Local laws and regulations governing the provision of the services called for in the contract. The Successful firm shall give notice and comply with all laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the performance of the work.

Any legal proceedings arising out of or related to this agreement shall be filed by the parties in the City of Lynchburg General District Court or the Lynchburg Circuit Court.

G. Additional Services

The City may add to the Scope of Services or make changes in the Scope of Services any services of a similar nature to those specified in the Scope of Services of this Request for Proposals as mutually agreed to at a price mutually agreed upon.

H. Serveability

Each paragraph and provision of the resultant contract will be severable from the entire agreement and if any provision is declared invalid, the remaining provisions shall remain in effect.

I. Licenses And Permits

The Successful firm shall secure and pay for all permits, governmental fees and licenses necessary for the proper execution and completion of the work which are legally required prior to and during the work. The City will not charge for any permits required by the City of Lynchburg.

J. Nondiscrimination

If the resultant contract exceeds \$10,000, during the performance of the contract, the Successful firm agrees as follows:

- a. The Successful firm will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Successful firm. The Successful firm agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The Successful firm, in all solicitations or advertisements for employees placed by or on behalf of the Successful firm, will state that such Successful firm is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d. The Successful firm will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontracted firm or vendor.

K. Payments To Successful firms

In accordance with Virginia Code Section 2.2-4354 the Successful firm agrees that:

1. Should any contractor be employed by the Successful firm for the provision of any goods or services under this Contract, the Successful firm agrees to the following:
  - (a) The Successful firm shall, within seven days after receipt of any payments from the City pursuant to this Contract, either:
    - (1) Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the goods or services provided by the subcontractor; or
    - (2) Notify the City, as applicable, and the subcontractor, in writing, of the intention to withhold all or a part of the subcontractors firm's payment with the reason for nonpayment. Written notice to the City shall be given to: City of Lynchburg Procurement Administrator, P.O. Box 60, Lynchburg, VA 24504.
  - (b) The Successful firm shall pay interest to the subcontractors firm, at the rate of one percent per month on all amounts owed to the subcontractors firm that remain unpaid after seven days following receipt of payment from the City for goods or services provided under this Contract, except for amounts withheld under subparagraph (a)(2) above.
  - (c) The Successful firm shall include in each of its subcontracts a provision requiring each subcontractors firm to include or otherwise be subject to the same payment and interest



requirements with respect to each lower-tier subcontractors firm.

- (d) The Successful firm's obligation to pay an interest charge to a subcontractors firm shall not be an obligation of the City .
- (e) No contract modification shall be allowed for the purpose of providing reimbursement for these interest charges. No cost reimbursement claim shall include any amount for reimbursement of these interest charges.

L. Contractual Claims

Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the Successful firm's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or claim shall be delivered to the City's Procurement Administrator, P.O. Box 60, Third Floor City Hall, Lynchburg Virginia 24504 and shall include a description of the factual basis for the claim and a statement of the amounts claimed or other relief requested. The City's Procurement Administrator shall render a decision on the claim and shall notify the Successful firm within 30 days of receipt of the claim. The Successful firm may appeal the decision of the City's Procurement Administrator by providing written notice to the City Manager, within 15 days of the date of the decision. The City Manager shall render a decision on the claim within 60 days of the date of receipt of the appeal notice and such decision shall be final unless the Successful firm appeals the decision in accordance with the Virginia Public Procurement Act. Invoices for all services or goods provided by the Successful firm shall be delivered to the City no later than 30 days following the conclusion of the work or delivery of the goods.

M. Taxes

The Successful firm shall pay all City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price as the taxes shall be an obligation of the Successful firm and not of the City and the City shall be held harmless for same by the Successful firm.

N. Indemnification

To the fullest extent permitted by law, the Successful firm, for itself, heirs, representatives, successors and assigns agrees to save, defend, keep harmless and indemnify the City and all of its officials, agents and employees (collectively, the "City") from and against any and all claims, loss, damage, injury, costs (including court costs and attorney's fees), charges, liability or exposure, however caused, resulting from, arising out of or in any way connected with the Successful firm's performance (or nonperformance) of the agreement terms or its obligations under this agreement.

O. Contract Assignment

The resultant contract may not be assigned, in whole or part, without the written consent of the City.

P. Royalty And License Fees And Copyright, Trademark And Patent Protection

The Successful firm shall pay all royalty and license fees relating to the items covered by the contract. In the event any third party shall claim that the manufacture, use and sales of these goods offered hereby constitutes an infringement of any copyright, trademark, or patent, the Offeror shall indemnify and hold harmless the City from any cost, expense, damage or loss incurred in any manner by the City on account of such alleged infringement.

Q. Responsibility for Property

The Successful firm shall be responsible for damages to property caused by work performed under the CONTRACT. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Successful firm shall be repaired or replaced by the Successful firm, to the satisfaction

of the Owner, at the Successful firm's expense.

R. Precedence Of Documents

The precedence of documents shall be as follows: the CONTRACT, the Request for Proposals and the Offeror's response to the Request for Proposals.

CITY OF LYNCHBURG, VIRGINIA  
**CONTRACT FOR CONSULTANT SERVICES**

**ENGINEERING SERVICES FOR THE COLLEGE HILL FILTRATION PLANT REHABILITATION**

This Contract, made at Lynchburg, Virginia, on \_\_\_\_\_, 2004, by and between the City of Lynchburg, Virginia (hereinafter referred to as the "City" or "Owner"), and \_\_\_\_\_  
(Hereinafter referred to as "Consultant").

**WITNESSETH:**

NOW THEREFORE, for and in consideration of the benefits which will accrue to the parties hereto by virtue of this Contract and the Respective Covenants contained herein, IT IS MUTUALLY COVENANTED AND AGREED AS FOLLOWS:

**SECTION 1: PROJECT DEFINITION**

The term Project as used in this Contract refers to the following:

Planning and Design Services for the City of Lynchburg, College Hill Filtration Plant Rehabilitation Project .

**SECTION 2: CONSULTANT SERVICES**

Consultant shall provide the following professional services together with the preparation of Project plans, design drawings and specifications for the orderly development of the Project:

A. SCOPE OF SERVICES:

The Consultant shall commence, carry on, and complete the Project with all dispatch in a sound, economical, and efficient manner, in accordance with the provisions hereof and all applicable laws. In accomplishing the Project, the Consultant shall take reasonable professional efforts to ensure that the work involved is properly coordinated with any related work being carried on by the City or by other City employees, consultants, representatives, or attorneys. The Consultant shall meet the standards of its profession in performing all services under this contract.

The Consultant shall perform all tasks as outlined in the Contract documents for applicable phases as described in the "Scope of Work" , herein incorporated as Attachment A, the City's "Request For Proposals" herein incorporated as Attachment B, and the Consultant's Proposal herein incorporated as Attachment C. If a conflict exists between these documents, the precedence of documents shall be as follows: (1<sup>st</sup>) this CONTRACT including the Scope of Work, (2<sup>nd</sup>) the City's Request for Proposals and (3<sup>rd</sup>) the Consultant's Proposal.

In addition, Consultant shall perform the following:

1. Consultant shall record a written record of all Project meetings with the Owner. Meeting minutes shall be submitted to the Owner not more than 10 days after the meeting.
2. This Project is a Design to Budget Project. The budget for this Project is \$ (to be set prior to Conceptual Design Phase). This cost will include all work required for a complete, usable and properly working Project. The Consultant is specifically advised of budget constraints for this Project and the Owner expects and the Consultant agrees to provide an acceptable design in accordance with the Project description and within the stated budget.
3. The Consultant and the Owner agree that should the Design to Budget cost identified in the paragraph above be exceeded by the low bidder by more than 10%, any revision to the Project plans and specifications necessary to bring the cost of the Project within the Design to Budget cost will be completed by the Consultant at no additional cost to the Owner.
4. A detailed cost estimate commensurate with the level of design shall be supplied by the Consultant with each Project phase submittal. Should any cost estimate indicate a problem in securing a bid within the Design to Budget cost, the Consultant shall notify the Owner to redefine the Project scope, materials of construction, etc., as necessary to resolve the estimated cost of construction within the Design to Budget cost.
5. The City may, from time to time, require changes in the scope of the services of the Consultant to be performed hereunder. Such changes, which are mutually agreed upon by and between the City and the Consultant, shall be incorporated in written amendments to this Contract. Any changes requiring any increase in the Contract sum shall be subject to the verification of funding by the City's finance department and accompanied by a purchase order change order.

B. PROJECT SCHEDULE

1. The Owner and the Consultant agree that time is of the essence and that delay in the design or construction may significantly impact the feasibility and/or cost of the Project.
2. The Project phases will correspond to the following definitions:
  - a. \_\_\_\_\_
  - b. \_\_\_\_\_
  - c. \_\_\_\_\_
  - d. .
  - e. Final Design Phase shall include final detailed design drawings, specifications and contract documents in a ready to bid form as specified by the City Purchasing Division.
  - f. Project Bid Phase shall include all consulting services necessary to attend a pre-bid conference, provide contract addenda in a ready to publicize form to the City Project Manager.
  - g. Construction Phase shall include all consulting services necessary to administer the construction of the Project.
3. The project schedule is defined in Attachment E.

C. PROJECT DELIVERABLES

The Consultant agrees to deliver to the Owner in a timely and proper manner the following:

1. Original mylar plan sheets with original certification signatures.
2. Prepare and provide all Project documents with original certification and regulatory approval signatures.
3. Reproducible copy of all Project documents prepared by the Consultant in PDF format.
4. All Project drawings in AutoCAD (Release 14 format) format together with any related symbol and/or font libraries.
5. Copies of all Project calculations, details, certifications, cost estimates, survey notes, charts, reports, studies, sketches, maps, and other documentation as may be reasonably required by the City Engineer for the Project.

**D. PERSONNEL**

1. The Consultant hereby designates assignments for this Project as follows:

Principal in Charge:	_____
Project Manager:	_____
Project Engineer:	_____
Civil Engineer:	_____
Structural Engineer:	_____
Mechanical Engineer:	_____
Electrical Engineer:	_____
Other personnel:	_____
	_____
	_____

2. Where circumstances require substitution for any of the above listed personnel assignments, the Consultant shall so advise the Owner in writing. The substitute shall be of the same or greater level of expertise and experience as the personnel being replaced. The Owner reserves the right to accept or reject any initial or substituted Project personnel. The Consultant's Project Manager shall not be reassigned or replaced during the term of the Contract without the express written approval of the Owner.

**SECTION 3: CONSULTANT FEES**

The Consultant and Owner agree as follows:

- A. All work under this contract shall be on a lump sum basis. The lump sum fee shall be determined on the basis of man-hours and associated hourly rates for all work required by the Project Description. The Consultant agrees that the lump sum fee is full and complete compensation for the completed Project design, contract documents, and all costs incurred and services rendered by the Consultant, without condition or limitation.
- B. A list showing Project tasks and associated man-hours is attached as Attachment A.
- C. Hourly rates for all personnel associated with the Project are included in Attachment D. These rates shall remain in effect for the Contract term. Escalation of rates is not permitted.
- D. The lump sum fee for the Project will be paid, subject to approval by the Owner of the Consultant's services, in accordance with the following Project phases:

TBD: \$ \_\_\_\_\_

TBD: \$ \_\_\_\_\_

Conceptual Design Phase:	\$ _____
Preliminary Design Phase	\$ _____
Final Design Phase:	\$ _____
Bidding Phase:	\$ _____
Construction Phase:	\$ _____
<b>Total Lump Sum Fee:</b>	<b>\$ _____</b>

- E. Work shall not begin on any phase of the Project without express written authorization from the Owner. The Owner and the Consultant agree that the Owner has the right to terminate, with or without cause, the Consultant's services at any time and the Owner may cancel this Contract at any time with or without cause and without incurring any liability, damages, or cost to the Consultant, except as set forth in Section 6.E.

#### **SECTION 4: PAYMENT FOR CONSULTANT SERVICES**

The Owner and Consultant agree that the Owner will only pay the Consultant a portion of the total lump sum fee set forth above for each project phase completed and accepted by the Owner. The Consultant shall submit a request for payment not more than once each month. The payment requested shall be in proportion to the services completed by Project phase and approved by the Owner. The Owner shall have the final decision with respect to the proportion of the Project completed. A written progress report detailing work completed, identified problems, and remaining work shall accompany each request for payment.

#### **SECTION 5: SPECIAL CONDITIONS**

- A. It is agreed by the Parties hereto that one (1) reproducible copy each of the drawings, tracings, construction plans, specifications, and maps prepared or obtained under the terms of the Contract shall be delivered to and become the property of the Owner and basic survey notes and sketches, charts, computations, and other data shall be made available, upon request, to the Owner without restriction or limitation on their use at no additional cost to the Owner.
- B. It is agreed by the Parties hereto that the Consultant shall proceed to furnish professional services on any phase of the Project under the terms provided in this Contract only after a Notice to Proceed with the next phase has been given to the Consultant in writing by the Owner.
- C. Each party binds itself, its principals, successors, executors, administrators, and assigns to perform all covenants and provisions of this Contract. Except as above noted, neither the Owner nor the Consultant shall assign or transfer its interest in this Contract without the written consent of the other Party hereto, which consent shall not be unreasonably withheld.
- D. The term of this Contract will be completed upon final approval and acceptance of the completed Project by Owner and any participating agencies. However, nothing contained herein shall be construed to establish a period of limitation with respect to any obligation which the Consultant might have under the Contract or the law of Virginia, including liability for errors and omissions.
- E. The Consultant agrees to conduct all the services in compliance with all applicable requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, Part 21 of the Regulations of the Secretary of Transportation and Executive Order No.11246, "Equal Employment Opportunity" as supplemented in Department of Labor Regulations (49 CFR, Part 60); and agrees to comply with all applicable standards, orders, or regulations issued pursuant of the Clean Air Act of 1970; and will maintain an Affirmative Action Program.

- F. Owner advises Consultant that failure of Consultant to carry out the requirements set forth in 45 Federal Register 21186, Section 23.43 (a) (1980) dealing with minority business enterprise, where appropriate, shall constitute a breach of contract and may result in termination of this Contract or such remedy as Owner deems appropriate.
- G. Consultant agrees that the work and services (which shall include, but not be limited to, all plans, drawings, and specifications) Consultant provides for the Owner pursuant to this Contract will comply with all applicable federal, state, and local laws, codes, and regulations that are in effect as of the date of the Contract or subsequently adopted. Furthermore, Consultant shall, in a timely manner, inform in writing the Owner, during the term of the Contract and until completion of the Consultant's services, about changes or modifications of all such laws, codes, or regulations that may affect or require modification or changes to any part of the Project so that Owner will be able to determine if changes or modifications should be made to the Project before completion.
- H. The Consultant agrees that the Owner, and any approving Federal or State Agency or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Consultant which are pertinent to this Project for the purpose of making an audit, examinations, excerpts, or transcriptions.
- I. The Consultant shall, at its sole expense, obtain and maintain during the life of this Contract the insurance policies and bonds required by this Section. Any required insurance policies and bonds shall be effective prior to the beginning of any work or other performance by the Consultant under this Contract. The following policies and coverage is required:
1. Commercial General Liability. Commercial General Liability insurance shall insure against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of the Consultant's performance under this Contract. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence.
  2. Contractual Liability. Broad form Contractual Liability insurance shall include the indemnification obligation set forth in this Contract.
  3. Workers' Compensation. Workers' Compensation insurance covering Consultant's statutory obligation under the laws of the Commonwealth of Virginia and Employer's Liability insurance shall be maintained for all its employees engaged in work under this Contract. Minimum limits of liability for Employer's Liability shall be \$100,000 bodily injury by accident each occurrence; \$500,000 bodily injury by disease (policy limit); and \$100,000 bodily injury by disease (each employee). With respect to Workers' Compensation coverage, the Consultant's insurance company shall waive rights of subrogation against the City, its officers, employees, agents, volunteers and representatives.
  4. Automobile Liability. The minimum limit of liability for Automobile Liability Insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Contract.
  5. Professional Liability: Minimum limits of insurance coverage for Professional Liability shall be \$1,000,000 per claim.
  6. Umbrella Coverage. The insurance coverage's and amounts set forth in subsections 1, 2, 3, and 4 of this Section may be met by an umbrella liability policy following the form of the underlying primary coverage in a minimum amount of \$2,000,000 . Should an umbrella liability insurance coverage policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific policy numbers indicated for the insurance providing the coverage's required by subsections 1, 2, 3, and 4, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished by the Consultant to the City.
  7. Evidence of Insurance. All insurance, with the exception of Professional Liability Insurance, shall be written on an occurrence basis. Professional Liability Insurance may be written on a claims-made basis. In addition, the following requirements shall be met:

8. Insurance on Drawings. Consultant shall carry full insurance coverage on drawings, and other valuable papers and records, including electronically stored media, against loss by fire, damage, and theft, until the improvement contemplated has been constructed and the corrected original drawings required by the City have been furnished to the City. The cost of such full coverage, as well as the cost of all other insurance required herein, shall be included in the basic fee herein set forth.
- a. Consultant shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. Certificates of insurance shall include any insurance deductibles.
  - b. The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been provided to the Risk Management Officer and the City Purchasing Agent".
  - c. The required certificate or certificates of insurance, excluding those for Workers Compensation and Professional Liability, shall name the City of Lynchburg, its officers, employees, agents, volunteers and representatives as additional insured's.
  - d. Where waiver of subrogation is required with respect to any policy of insurance required under this Section, such waiver shall be specified on the certificate of insurance.
  - e. Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Contract shall be authorized to do business in the Commonwealth of Virginia.
- J. The Consultant agrees to and shall indemnify and hold harmless Owner and its officers, agents, volunteers, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, cost, and expenses, including reasonable attorney's fees, resulting from or arising out of Consultant's or it's agent's, subcontractor's and/or sub consultants' negligent activities or omissions on or near any of the Owner's property or easements involved in this Project or arising out of or resulting from Consultant's negligence in providing any of the services under this Contract, including, without limitation, fines and penalties, violations of federal, state, or local laws, or regulations promulgated thereunder, or any personal injury, wrongful death, or property damage claims of any type.
- K. While on Owner's property and in its performance of this Contract, Consultant or it's agents, subcontractor's and/or sub consultant's shall not transport, dispose of, or release any hazardous substance, material, or waste, except as necessary in performance of its work under this Contract and Consultant shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous materials, substances, or waste.
- Regardless of Owner's acquiescence, Consultant agrees to and shall indemnify and hold Owner, its officers, agents, volunteers, and employees harmless from all costs, damages, liabilities, fines, or penalties, including attorney's fees, resulting from violation of this paragraph and agrees to reimburse Owner for all costs and expenses incurred by Owner in eliminating or remedying such violations. Consultant also agrees to reimburse Owner and hold Owner, its officers, agents, volunteers, and employees harmless from any and all costs, damages, expenses, attorney's fees and all penalties or civil judgments obtained against any of them as a result of Consultant's or it's agents, subcontractors and/or sub consultants use or release of any hazardous material, substance, or waste onto the ground or otherwise, or into the water or air from or upon or near Owner's property or easements.
- L. The provisions, requirements, and prohibitions as contained in Sections 2.2-4367 through 2.2-4377, of the Virginia Code (Ethics in Public Contracting), pertaining to bidders, officers, contractors, and subcontractors are applicable to this Project.



M. DEFAULT AND TERMINATION

1. **Owner's Rights in the Event of Default.** Upon the occurrence of Consultant default, the Owner may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:
2. Withhold payments that would otherwise be due, until the default has been cured.
3. Enjoin any breach or threatened breach by Consultant of any covenants, agreements, terms, provisions or conditions hereof.
4. Sue for the performance of any obligation, promise or agreement devolving upon Consultant for performance or for damages for the nonperformance thereof, all without terminating this Contract.
5. Terminate this Contract upon written notice of an intention to so and have the services then uncompleted performed by another Consultant. In such case, the Consultant shall be liable to the Owner for any damages allowed by law, and upon demand Consultant shall promptly pay same to Owner.
6. Receive from the Consultant all data, drawings, reports, analyses, summaries and any other information and materials as may have accumulated by the Consultant in performing this Contract whether completed or in process.
7. **All Remedies Cumulative.** All rights and remedies granted to the Owner herein, and other rights and remedies which the Owner may have at law and in equity, are hereby declared to be cumulative and not exclusive, and the fact the Owner may have exercised any remedy without terminating this Contract shall not impair the Owner's rights thereafter to terminate or to exercise any other remedy herein granted or to which is may be otherwise entitled.
8. **Termination of Contract.** The Owner, upon seven (7) days written notice, may terminate this Contract, without cause, in whole or in part at any time. Upon receipt of such notice, the Consultant shall:
  - a. Immediately discontinue all services affected (unless the notice directs otherwise); and,
  - b. Deliver to the Owner all data, drawings, specifications, reports, estimates, plans, working papers, summaries and such other information and materials as may have been prepared as part of the work or accumulated by the Consultant in performing this project, whether completed or in process.
9. **Consultant's Right to Fee Upon Termination.** Should the Contract be terminated for reasons other than default, the Consultant shall be entitled to and shall receive a fee for completed services, as certified by Consultant and verified by City, equal to a percentage of the fixed payment as described in Section 3. The percentage shall represent the amount of work completed to date compared to the estimated amount of work to complete the phase of the work in question as determined by Owner. Reimbursable expenses shall also be paid.

N. COMPLETENESS OF CONTRACT.

Subject to the provisions of this Contract, the City's Request for Proposals, the Consultant's Proposal to provide Professional Services and the negotiated detailed Scope of Work shall constitute the entire agreement between the City and the Consultant which supersedes any and all other prior negotiations, representations or agreements, either oral or written; provided, however, that in the event of any express or implied conflict or inconsistency between (i) Consultant's Proposal and (ii) City's Request For Proposals or this Contract, in all cases the terms and conditions of Owner's Request For Proposals and this Contract shall control and prevail. In

the event of any express or implied conflict or inconsistency between: (i) Owner's Request For Proposals and (ii) this Contract, in all cases the terms and conditions of this Contract shall control and prevail. This Contract may be amended only by written instrument signed by both parties. Any provision or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be binding upon the parties hereto, who agree that the Contract shall be reformed to such provision or part thereof with valid and enforceable terms that comes as close as possible to expressing the intention of the stricken provision. All representations, covenants, and indemnifications made or given by the Consultant in this Contract shall survive the completion of all services of Consultant under this Contract and the termination of this Contract for any reason.

## **SECTION 6: SPECIAL PROVISIONS**

- A. If any of the services furnished under this Contract by the Consultant are furnished by obtaining such services outside the Consultant's organization, the Consultant shall provide an executed contract between the person(s) or firm and the Consultant and shall outline the services to be performed and the charges for the same. Such contracts shall be subject to approval by the Owner. Two copies of the executed contract shall be submitted to the Owner for approval prior to the services being performed. Approval shall not be unreasonably withheld. The Consultant shall be solely responsible for all costs and expenses in connection with any such contracts.
- B. The Owner shall make available to the Consultant all reasonable technical data that is in the Owner's possession, including maps, surveys, property descriptions, borings, and other information requested by the Consultant and relating to his work. The Owner and the Consultant agree that the Owner may decide in its sole discretion the reasonableness of any information requested by the Consultant. The Owner shall designate, in writing to the Consultant, the name of the Owner's Project manager for the Project.
- C. The Consultant shall review available maps and drawings for locations of archeological sites within the City of Lynchburg and shall notify the Owner of any potential conflicts between the proposed Project and such sites.
- D. The Owner shall pay for the following: (1 ) publishing costs for advertisements of notices, public hearings, requests for bids, and other similar items; (2) for all permits and licenses that may be required by local, state, or federal authorities; and (3) for the necessary land, easements, and rights of way required for the Project.
- E. The Owner by seven days written notice may terminate this Contract, with or without cause, in whole or in part at any time. Upon receipt of such notice, the Consultant shall immediately discontinue all services affected (unless the notice directs otherwise), and deliver to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Consultant in performing this Contract whether completed or in process.
  - 1. If the termination is due to the failure of the Consultant to fulfill any of its Contract obligations, the Owner may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the Consultant shall be liable to the Owner for any damages allowed by law and upon demand of Owner shall promptly pay the same to Owner.
  - 2. Should the Contract be terminated not due in any way to the fault of the Consultant, the Consultant shall only be entitled to compensation for services actually performed prior to notice of termination and approved by the Owner and any applicable federal or state approving agency.
  - 3. The Consultant shall be liable for any damages caused by its negligent acts, errors, and/or omissions. The Consultant further agrees that it will not charge the Owner for any services necessary to correct and negligent acts, errors and omissions of the Consultant.
  - 4. The rights and remedies of the Owner provided in this Section are in addition to any other rights and remedies provided by law or under this Contract and Owner may pursue any and all such rights and remedies against Consultant as it deems appropriate.

- F. If the construction plans are completed in accordance with criteria and/or decisions made by the Owner and the said construction plans are substantially changed or revised, for any reason other than the fault of the Consultant in preparing same, then the Consultant shall be entitled to compensation as mutually agreed upon between the Owner and Consultant for rendering the services necessary to complete the changes. The amount of this fee shall be negotiated between the parties. The fee for the changes shall be due and payable when the revisions are approved by the Owner.
- G. If agreement cannot be reached between the parties for rendering such services, then the Owner can terminate the Contract without any liability of any type for any damages or compensation to the Consultant, and the Owner will owe nothing further to the Consultant. However, if such changes or revisions are due in any way to the fault of the Consultant, the Owner can require the Consultant to perform the services required under this Contract and make such changes and revisions without any additional charges by the Consultant and pursue such other remedies available to the Owner under this Contract or by law, or any combination of such remedies as the Owner deems appropriate.
- H. By virtue of entering into this Contract the Consultant submits itself to a court of competent jurisdiction in the City of Lynchburg, Virginia, and further agrees that this Contract is controlled by the laws of the Commonwealth of Virginia and that all claims, disputes, and other matters shall only be decided by such a court according to the laws of the Commonwealth of Virginia.
- I. Consultant agrees that no payment, final or otherwise, nor partial or entire use, occupancy, or acceptance of the Project by the Owner shall be an acceptance of any professional services not in accordance with the Contract, nor shall the same relieve the Consultant of any responsibility for any errors or omissions in connection with the Project or operate to release the Consultant from any obligation under the Contract.
- J. The Consultant shall be fully responsible to the Owner for all acts and omissions of all succeeding tiers of subcontractors, agents, and sub consultants performing or furnishing any of the work just as the Consultant is responsible for its own acts and omissions.
- K. The Consultant agrees to comply with all applicable federal, state, and local laws, codes and regulations currently in force or subsequently adopted, including terms and provisions of Lynchburg City Code. In performance of this Contract, the Consultant shall not discriminate against any contractor, subcontractor, sub lessee, employee, applicant for employment or invitee because of race, religion, color, sex, or national origin, except where race, religion, color, sex, or national origin is a bona fide qualification reasonably necessary to the normal operation of the Consultant.
- L. This Contract constitutes the entire agreement between the Consultant and the City and may be amended only by written instrument signed by both the Consultant and the City.

**IN WITNESS WHEREOF**, the parties hereto have affixed their hand and seals.

ATTEST:

*(Full Legal Name of Consultant)*

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

(SEAL)

ATTEST:

CITY OF LYNCHBURG, VIRGINIA

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney

Approved as to Execution:

\_\_\_\_\_  
City Attorney

**ATTACHMENTS TO CONTRACT FOR CONSULTANT SERVICES**

**ATTACHMENT "A" – PROJECT TASKS AND ASSOCIATED MANHOURS (SCOPE OF WORK)**

**ATTACHMENT "B" - OWNER'S REQUEST FOR PROPOSALS**

**ATTACHMENT "C" - CONSULTANT'S PROPOSAL AND DETAILED TASK SCOPE**

**ATTACHMENT "D" – CONSULTANT'S HOURLY RATES**

**ATTACHMENT "E" - CONSULTANT'S SCHEDULE FOR COMPLETION OF SERVICES**